

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Requests for Review of Decisions of the)	
Universal Service Administrator by)	
)	
Archer Public Library, Archer City, TX, <i>et al.</i>)	File Nos. SLD-140961, <i>et al.</i>
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: October 30, 2008

Released: October 30, 2008

By the Acting Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant 13 appeals of decisions by the Universal Service Administrative Company (USAC) denying funding to the petitioners due to certain clerical or ministerial errors in completing their FCC Forms 471 or the associated Item 21 attachments under the schools and libraries universal service support mechanism, also known as the E-rate program.¹ We find that the issues raised here are similar to those addressed by the Commission in the *Bishop Perry Order*.² We therefore remand the underlying applications to USAC for further action consistent with the *Bishop Perry Order*.³ To the extent necessary, we waive section 54.504(c) of the Commission's rules to allow the petitioners to amend their original applications and associated Item 21 attachments submitted to USAC.⁴ To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each underlying application and issue an award or denial based upon a complete review and analysis no later than 90 calendar days from the release date of this order.

¹ A list of the appeals is attached as an appendix to this order. In this order, we use the term "appeals" to generally refer to requests for review of decisions by USAC or the Commission. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c).

² *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*) (waiving the Commission's rules to allow applicants additional time to file their FCC Forms 471 where applicants committed ministerial or clerical errors).

³ See *Bishop Perry Order*, 21 FCC Rcd 5316.

⁴ 47 C.F.R. § 54.504(c) (providing that applicants shall submit a completed FCC Form 471 application to USAC). The filing window may vary slightly from Funding Year to Funding Year. For example, in Funding Year 2005, the filing window opened on December 14, 2004, and closed on February 18, 2005. In Funding Year 2006, the filing window opened on December 6, 2005, and closed on February 16, 2006. See generally USAC website, Schools and Libraries, Schools and Libraries Deadlines, <http://www.universalservice.org/sl/tools/deadlines/default.aspx> (retrieved Aug. 19, 2008).

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁵ Once a school or library has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify USAC of the services that have been ordered, the service providers with whom the applicant has entered into an agreement, and an estimate of the funds needed to cover the discounts to be given for eligible services.⁶ Services and products for which discounts are requested must be described on the Item 21 attachment to the FCC Form 471.⁷

3. Under the Commission's rules, USAC implements an initial filing period, or filing window, for the FCC Form 471 applications, and USAC treats all schools and libraries applications filed within that period as simultaneously received.⁸ Upon receipt and successful data entry of an FCC Form 471, USAC issues an FCC Form 471 receipt acknowledgement letter (RAL) to both the applicant and the service provider to confirm receipt of a timely filed FCC Form 471 and certification.⁹ Currently, if data entry or ministerial errors have occurred during the FCC Form 471 application process, applicants may make allowable corrections to their FCC Form 471 within 15 days of the date of the FCC Form 471 RAL without submitting a new FCC Form 471 application.¹⁰ Absent a ministerial or clerical error on the part of USAC or the applicant, changes that increase the amount of support requested or that add services not initially requested have generally only been allowed if an applicant submits a new FCC Form 471 application prior to the close of the filing window deadline.¹¹

⁵ 47 C.F.R. §§ 54.501-54.503.

⁶ 47 C.F.R. § 54.504(c); *see, e.g.*, Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471).

⁷ *See* USAC website, Schools and Libraries, Item 21 Attachments to Form 471, <http://www.usac.org/sl/applicants/step07/form471-attachments.aspx> (retrieved Aug. 19, 2008).

⁸ 47 C.F.R. §§ 54.507(c).

⁹ *See* USAC website, Schools and Libraries, Form 471 Receipt Acknowledgement Letter, <http://www.usac.org/sl/applicants/step07/receipt-acknowledgement-letter.aspx> (retrieved Aug. 19, 2008) (FCC Form 471 RAL Procedures).

¹⁰ *See* FCC Form 471 RAL Procedures; Form 471 Receipt Acknowledgement Letter, Funding Year 2008: 07/01/2008 – 06/30/2009, http://www.usac.org/_res/documents/sl/pdf/SampleLetters/form-471RAL-applicant.pdf (retrieved Aug. 19, 2008) (Funding Year 2008 RAL); *Bishop Perry Order*, 21 FCC Rcd at 5316-17, para. 2. Previously, USAC provided two weeks to submit certain corrections. *See* Form 471 Receipt Acknowledgement Letter, Funding Year 2001: 07/01/2001- 06/30/2002 (Funding Year 2001 RAL); *Request for Review of the Decision of the Universal Service Administrative Company by Oklahoma City Public Schools, Oklahoma City, Oklahoma, Schools and Libraries Universal Service Support Mechanism*, File No. SLD-262187, CC Docket Nos. 96-45, 97-21, 17 FCC Rcd 23501, 23502, para. 3 (Wireline Comp. Bur. 2002) (*Oklahoma City Order*). Corrections that were permitted at that time included changing contact information, reducing the amount of funding requested in an application, changing the service provider identification number if the original service provider had merged with or been acquired by the new service provider, and “unbundling” or “splitting” a funding request that incorrectly combined two requests. *See* Funding Year 4 RAL; *Oklahoma City Order*, 17 FCC Rcd at 23502, para. 3. USAC has expanded the allowable corrections to include, among other changes, change in category of service, contract number, service start date, contract award date. *See* Funding Year 2008 RAL.

¹¹ *See generally* *Bishop Perry Order*, 21 FCC Rcd 5316; *Request for Review of the Universal Service Administrative Company by Donna Public Library, Donna, Texas, Schools and Libraries Universal Service Support Mechanism*,

4. Upon successful submission of an FCC Form 471 application, USAC reviews the FCC Form 471 to verify the accuracy of discount percentages and ensure that support is committed only for eligible products and services.¹² This review is known as the Program Integrity Assurance (PIA) review.¹³ If an applicant is contacted during PIA review, it will typically be asked to provide or substantiate information on a form that the applicant has submitted to USAC.¹⁴ After the FCC Form 471 application has been processed, USAC then issues a funding commitment decision letter (FCDL) indicating the funding, if any, the applicant is approved to receive.¹⁵

5. We have under consideration 13 appeals of decisions by USAC denying funding under the E-rate program due to certain clerical or ministerial errors in completing the FCC Forms 471 or the associated Item 21 attachments (such as entering the wrong dollar amount, term of service, or discount level).¹⁶ In their requests for review, the petitioners generally request that the Commission allow them to modify their FCC Forms 471 or Item 21 attachments to correct their errors.

III. DISCUSSION

6. We grant these 13 appeals because the petitioners have demonstrated that special circumstances justify a waiver of section 54.504(c) of the Commission's rules to allow them to amend their original FCC Form 471 applications or the Item 21 attachments submitted to USAC.¹⁷ USAC denied the petitioners' funding requests due to certain clerical or ministerial errors in completing the FCC Form 471 applications or the associated Item 21 attachments.¹⁸ In all 13 cases, the petitioners attempted to modify their FCC Form 471 applications or the Item 21 attachments to correct their errors, albeit after the close of the relevant filing window. Specifically, in 11 instances, the petitioners made errors on their FCC Form 471 applications.¹⁹ For example, Elko County School District (Elko County) submitted a

File Nos. SLD-289464, 319218, 320003, 324301, 324627, CC Docket No. 02-6, Order, 19 FCC Rcd 6358 (Wireline Comp. Bur. 2004) (*Donna Public Library Order*).

¹² See USAC website, Schools and Libraries, Undergo Application Review, <http://www.universalservice.org/sl/applicants/step08/default.aspx> (retrieved Aug. 19, 2008).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See USAC website, Schools and Libraries, Receive Your Funding Decision, <http://www.universalservice.org/sl/applicants/step09/> (retrieved Aug. 19, 2008).

¹⁶ See Appendix.

¹⁷ See Appendix; 47 C.F.R. § 54.504(c). The Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166.

¹⁸ See, e.g., Letter from USAC, Schools and Libraries Division, to Cheryl Beesinger, Archer Public Library (dated Sept. 9, 2005) (Archer USAC Decision on Appeal); Letter from USAC, Schools and Libraries Division, to Carey Jones, Assumption High School (dated Jan. 15, 2003) (Assumption USAC Decision on Appeal).

¹⁹ Archer Public Library mistakenly requested a discount of 20 percent when it should have requested a discount of 50 percent. Letter from Cheryl Beesinger, Archer Public Library, to Federal Communications Commission, CC

monthly service charge for one line rather than for two lines for two schools in its district.²⁰ In two other instances, the petitioners claim that USAC incorrectly interpreted the information that was provided to USAC in their FCC Form 471 applications.²¹

Docket No. 02-6, at 1 (filed Sept. 13, 2005); Email from Cheryl Beesinger, Archer Public Library, to USAC, Schools and Libraries Division (dated July 1, 2005). Assumption High School accidentally failed to include the contract expiration date. *See* Letter from Carey Jones, Assumption High School, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21, at 1 (filed Feb. 27, 2003). Craig City School District, upon receiving its FCC Form 471 RAL, noticed that its funding request for Internet access was not included in the RAL and provided a copy of its FCC Form 471 printout to USAC to show that it had requested Internet access. *See* Letter from Karen Head, Craig City School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (filed May 10, 2004). USAC, however, denied Craig City's appeal, indicating that its request for Internet access was not included in its certified FCC Form 471 application submitted to USAC. *See* Letter from USAC, Schools and Libraries Division, to Karen Head, Craig City School District (dated Apr. 12, 2004). Illinois School for the Deaf understated the amount of its recurring charges on its FCC Form 471 application by approximately \$11,000. *See* Letter from Marybeth Heinemann, Illinois School for the Deaf, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21, at 1 (filed Apr. 8, 2003). Kingman Unified School District accidentally interchanged funding amounts for two schools in its district on their FCC Form 471 applications, resulting in conflicting amounts on the schools' applications. *See* Letter from Lynn Easton, Kingman Unified School District #20, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21, at 1-2 (filed May 1, 2003). Midwest City-Del City School District entered a monthly amount for a single school site rather than for the entire district. *See* Letter from Pam Deering, Midwest City-Del City School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (filed Oct. 21, 2005). The New York City Department of Education's (NYCDOE) funding request referenced only 76 of the 181 schools for which it based its request of approximately \$46 million in funding. *See* Letter from Ling Tan, The New York City Department of Education, to Federal Communications Commission, Office of the Secretary, CC Docket No. 02-6, at 3 (filed June 8, 2004). NYCDOE contends that the data may have been lost due to a data entry or system error while filing the application electronically for the first time. *Id.* St. Stanislaus Kostka mistakenly entered the wrong pre-discounted amount of \$1,320 for its Internet access service rather than the correct amount of \$6,600. *See* Letter from Sister M. Dorothea Jutkowski, St. Stanislaus Kostka School, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (filed May 31, 2005). Southern Oklahoma Technology Center (SOTC) entered an incorrect number of students eligible for the national school lunch program, which, if corrected, would raise SOTC's requested discount from 80 percent to 90 percent. *See* Letter from Deborah Sovereign, Kellogg & Sovereign Consulting, LLC, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1-2 (filed Apr. 18, 2005). Although PP TEC High School correctly requested 12 months of Internet access service on its FCC Form 471, it erroneously entered the dollar amount for one month of Internet service instead of the dollar amount for 12 months of Internet service. *See* Letter from Elise Arnold, PPEP TEC High School, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21, at 1 (filed May 23, 2003).

²⁰ *See* Letter from Beth Kern, Elko County School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (filed Jan. 3, 2007). In its appeal to the Commission, Elko County also requests a Service Provider Identification Number (SPIN) change. *Id.* We instruct USAC to consider Elko County's SPIN request under E-rate program guidelines, as detailed on USAC's website. *See* USAC website, Schools and Libraries, SPIN Change Guidance, <http://www.usac.org/sl/about/changes-corrections/spin-change-guidance.aspx> (retrieved Aug. 19, 2008).

²¹ First, Calhan School District (Calhan) claims that, although the words "maintenance/custodial" appeared in the budget reports that were part of its Item 21 attachment for phone service, it was not seeking funding for phone service for maintenance and custodial personnel, which is an ineligible use of E-rate program funds. *See* Letter from Sharon Olyejar, Calhan School District RJ-1, to Office of the Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 97-21, at 1 (filed Mar. 10, 2003). Calhan alleges that the district's accounts are structured such that all of the district's utilities are paid from a section in its budget labeled "maintenance/custodial." *Id.* at 2; *see* Letter from Sharon Olyejar, Calhan School District RJ-1, to USAC, Schools and Libraries Division, at 1 (dated Feb. 28, 2003). Calhan's business manager, moreover, indicates that the district's maintenance department does not

7. Consistent with precedent, and based on the facts and circumstances of these cases, we find that the mistakes at issue here are sufficiently similar to those in the *Bishop Perry Order*, warranting a waiver of section 54.504(c) of the Commission's rules to the extent that the petitioners will need to amend their original FCC Form 471 applications or Item 21 attachments submitted to USAC.²² As in the *Bishop Perry Order*, the facts and circumstances of these specific cases all involve rejection of funding requests due to unintentional administrative or clerical errors, and the records of each petitioner do not reveal more fundamental problems, such as misuse of funds or a failure to adhere to core program requirements.²³ In this instance, we are waiving the deadline for submitting a complete FCC Form 471 application to USAC, not a substantive rule. Further, the applicants' errors could not have resulted in an advantage for them in the processing of their applications. That is, the applicants' mistakes, if not caught by USAC, would not have resulted in the applicants receiving more funding than they were entitled to. As the Commission noted in the *Bishop Perry Order*, many E-rate program beneficiaries, particularly small entities, contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical or procedural errors.²⁴ We thus find that the partial denial of the underlying applications is not warranted, given that the violations at issue are procedural, not substantive.²⁵

8. Further, like the applicants in the *Bishop Perry Order*, the petitioners have demonstrated that rigid adherence to filing procedures does not further the purposes of section 254(h) of the Communications Act of 1934, as amended (the Act), or serve the public interest.²⁶ Specifically, section 254 of the Act directs the Commission to "enhance . . . access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries."²⁷ We believe that granting these appeals, in this instance, furthers the goals of section 254 of the Act because the applicants' funding will not be denied due to minor errors. We thus find that a denial of funding in all instances inflicts undue hardship on the applicants. In addition, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements. We therefore grant the appeals listed in the appendix and remand the underlying applications to USAC for further processing consistent with this order.²⁸ To ensure that the underlying

even have a telephone. Calhan Request for Review at 3. Second, Fort Zumwalt School District (Fort Zumwalt) claims that USAC misinterpreted its Item 21 documentation as supporting duplicate requests for frame relay Internet service within the same FCC Form 471 application. See Letter from Larry Higgins, Fort Zumwalt School District, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6, at 1 (dated Oct. 12, 2004). Fort Zumwalt explains that it did not submit a duplicate request and that the Item 21 documentation was submitted as part of the total telephone bill, but that when it sought discounts for the telecommunications service, it deducted the cost of the frame relay Internet service from the invoice it submitted to support its telecommunications request and then used a copy of the same invoice to support its request for frame relay Internet access. *Id.*; see also Letter from Bernard DuBray, Fort Zumwalt School District, to USAC, Schools and Libraries Division (dated June 15, 2004).

²² See *Bishop Perry Order*, 21 FCC Rcd at 5316, para. 1; 47 C.F.R. § 54.504(c).

²³ See *Bishop Perry Order*, 21 FCC Rcd at 5323, para. 14.

²⁴ *Id.* at 5316-17, para. 2.

²⁵ *Id.* at 5323, para. 14.

²⁶ See 47 U.S.C. § 254(h). The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, amended the Communications Act of 1934.

²⁷ See 47 U.S.C. § 254(h).

²⁸ We estimate that the appeals granted in this order involve approximately \$47,072,214 in funding. We note that USAC has already reserved sufficient funds to address the outstanding appeals. Universal Service Administrative

applications are resolved expeditiously, we direct USAC to complete its review of the underlying applications listed in the appendix and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.²⁹ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.³⁰ We remind USAC of its obligation to independently determine whether the disbursement of universal service funds would be consistent with program requirements, Commission rules and orders, or applicable statutes and to decline to disburse funds where this standard is not met.

9. We emphasize the limited nature of this decision. We recognize that the Commission's filing deadlines and procedural rules are necessary for the efficient administration of the E-rate program. Thus, while we grant these appeals and waive section 54.504(c) of the Commission's rules, we continue to require E-rate applicants to timely submit complete and accurate information to USAC as part of the application process.

10. Finally, we emphasize that the Commission is committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the E-rate program are used for appropriate purposes. Although we grant the appeals addressed here, the Commission reserves the right to conduct audits or investigations to determine compliance with the E-rate program rules or requirements. Because audits and investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent we find that funds were not used properly, the Commission will require USAC to recover such funds through its normal process. We emphasize that the Commission retains the discretion to evaluate the uses of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), that the underlying applications associated with the appeals listed in the appendix ARE GRANTED and REMANDED to USAC for further consideration consistent with this order.

12. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3

Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2008 (Aug. 1, 2008). We thus determine that the action we take today should have minimal impact on the universal service fund as a whole.

²⁹ In performing a complete review and analysis of the underlying application, USAC shall either grant the underlying application before it, or, if denying the application, provide the applicant with any and all grounds for denial.

³⁰ Additionally, nothing in this order is intended: (1) to authorize or require payment of any claim that previously may have been released by a service provider or applicant, including in a civil settlement or plea agreement with the United States; or (2) to authorize or require payment to any person or entity that has been debarred from participation in the E-rate program.

and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 1.3 and 54.722(a), section 54.504(c) of the Commission's rules, 47 C.F.R. § 54.504(c) IS WAIVED to the extent provided herein.

13. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Universal Service Administrative Company SHALL COMPLETE its review of each remanded application referenced in this order and ISSUE an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order.

14. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jennifer K. McKee
Acting Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX

Applicant	Application Number	Funding Year	Date Filed
Archer Public Library Archer City, TX	442513	2005	9/13/2005
Assumption High School Davenport, IA	328302	2002	2/27/2003
Calhan School District RJ-1 Calhan, CO	329050	2002	3/10/2003
Craig City School District Craig, AK	364394	2003	5/10/2004
Elko County School District Elko, NV	513473	2006	1/3/2007
Fort Zumwalt School District O'Fallon, MO	399713	2004	10/19/2004
Illinois School for the Deaf Jacksonville, IL	317808	2002	4/8/2003
Kingman Unified School District #20 Dolan Springs, AZ	309943, 309818	2002	5/1/2003
Midwest City-Del City School District Midwest City, OK	461618	2005	10/21/2005
New York City Department of Education Brooklyn, NY	286071	2002	6/8/2004
PPEC TEC High School Tucson, AZ	308245	2002	5/23/2003
Southern Oklahoma Technology Center Ardmore, OK	387740, 387741	2004	4/18/2005
St. Stanislaus Kostka School Brooklyn, NY	391829	2004	5/31/2005